

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 50

STATE OF NEW JERSEY
211th LEGISLATURE

ADOPTED MARCH 4, 2004

Sponsored by:

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District 20 (Union)

Assemblywoman LORETTA WEINBERG

District 37 (Bergen)

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**Assemblywoman Watson Coleman, Assemblyman Eagler, Assemblywoman
Greenstein, Assemblymen Hackett, Johnson, Caraballo, Chivukula,
Greenwald, Green, Senators Vitale, Lesniak and Madden**

SYNOPSIS

"New Jersey Medical Care Access and Responsibility and Patients First
Act."

CURRENT VERSION OF TEXT

As reported by the Senate Health, Human Services and Senior Citizens
Committee on March 22, 2004, with amendments.

(Sponsorship Updated As Of: 3/30/2004)

1 **AN ACT** concerning medical professional liability, insurance reform
2 and patient protection and revising parts of the statutory law.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. (New section) This act shall be known and may be cited as the
8 "New Jersey Medical Care Access and Responsibility and Patients
9 First Act."

10
11 2. (New section) The Legislature finds and declares that:

12 a. One of the most vital interests of the State is to ensure that
13 high-quality health care continues to be available in this State and that
14 the residents of this State continue to have access to a full spectrum
15 of health care providers, including highly trained physicians in all
16 specialties;

17 b. The State's health care system and its residents' access to health
18 care providers are threatened by a dramatic escalation in medical
19 malpractice liability insurance premiums, which is creating a crisis of
20 affordability in the purchase of necessary liability coverage for our
21 health care providers;

22 c. One particularly alarming result of rising premiums is that there
23 are increasing reports of doctors retiring or moving to other states
24 where insurance premiums are lower, dropping high-risk patients and
25 procedures, and practicing defensive medicine in a manner that may
26 significantly increase the cost of health care for all our citizens;

27 d. The reasons for the steep increases in the cost of medical
28 malpractice liability insurance are complex and involve issues related
29 to: the State's tort liability system; the State's health care system,
30 which includes issues related to patient safety and medical error
31 reporting; and the State's regulation and requirements concerning
32 medical malpractice liability insurers;

33 e. It is necessary and appropriate for the State to take meaningful
34 and prompt action to address the various interrelated aspects of these
35 issues that are impacted by, or impact on, the State's health care
36 system; and

37 f. To that end, this act provides for a comprehensive set of
38 reforms affecting the State's tort liability system, health care system
39 and medical malpractice liability insurance carriers to ensure that
40 health care services continue to be available and accessible to residents
41 of the State and to enhance patient safety at health care facilities.

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly floor amendments adopted March 11, 2004.

² Senate SHH committee amendments adopted March 22, 2004.

1 3. N.J.S.2A:14-2 is amended to read as follows:

2 2A:14-2. ¹ a.¹ Every action at law for an injury to the person
3 caused by the wrongful act, neglect or default of any person within this
4 [state] State shall be commenced within 2 years next after the cause
5 of any such action shall have accrued; except that an action by or on
6 behalf of a minor that has accrued for medical malpractice for injuries
7 sustained at birth shall be commenced prior to the minor's 13th
8 birthday.

9 ¹b. In the event that an action by or on behalf of a minor that has
10 accrued for medical malpractice for injuries sustained at birth is not
11 commenced by the minor's parent or guardian prior to the minor's 12th
12 birthday, the minor or a person 18 years of age or older designated by
13 the minor to act on the minor's behalf may commence such an action.
14 For this purpose, the minor or designated person may petition the
15 court for the appointment of a guardian ad litem to act on the minor's
16 behalf.¹

17 (cf: N.J.S.2A:14-2)

18
19 4. N.J.S.2A:14-21 is amended to read as follows:

20 2A:14-21. If any person entitled to any of the actions or
21 proceedings specified in [sections] N.J.S.2A:14-1 to 2A:14-8 or
22 [sections] N.J.S.2A:14-16 to 2A:14-20 [of this title] or to a right or
23 title of entry under [section] N.J.S.2A:14-6 [of this title] is or shall
24 be, at the time of any such cause of action or right or title accruing,
25 under the age of 21 years, or insane, such person may commence such
26 action or make such entry, within such time as limited by [said
27 sections] those statutes, after his coming to or being of full age or of
28 sane mind. Notwithstanding the provisions of this section to the
29 contrary, an action by or on behalf of a minor that has accrued for
30 medical malpractice for injuries sustained at birth shall be commenced
31 prior to the minor's 13th birthday, as provided in N.J.S.2A:14-2.

32 (cf: N.J.S.2A:14-21)

33
34 5. (New section) The judge presiding over a medical malpractice
35 action, or the judge's designee, shall, within 30 days after the
36 discovery end date, determine whether referral to a complementary
37 dispute resolution mechanism may encourage early disposition or
38 settlement of the action. If the judge makes such a determination, the
39 matter shall be referred to complementary dispute resolution pursuant
40 to Rule 1:40 of the Rules Governing the Courts of the State of New
41 Jersey.

42 Nothing in this section shall be construed to limit the authority of
43 the judge to refer an action to complementary dispute resolution prior
44 to the discovery end date.

45
46 6. (New section) a. A health care provider named as a defendant

1 in a medical malpractice action may cause the action against that
2 provider to be dismissed upon the filing of an affidavit of
3 noninvolvement with the court. The affidavit of noninvolvement shall
4 set forth, with particularity, the facts that demonstrate that the
5 provider was misidentified or otherwise not involved, individually or
6 through its servants or employees, in the care and treatment of the
7 claimant, and was not obligated, either individually or through its
8 servants or employees, to provide for the care and treatment of the
9 claimant, and could not have caused the alleged malpractice, either
10 individually or through its servants or employees, in any way.

11 b. A codefendant or claimant shall have the right to challenge an
12 affidavit of noninvolvement by filing a motion and submitting an
13 affidavit that contradicts the assertions of noninvolvement made by the
14 health care provider in the affidavit of noninvolvement.

15 c. If the court determines that a health care provider named as a
16 defendant falsely files or makes false or inaccurate statements in an
17 affidavit of noninvolvement, the court, upon motion or upon its own
18 initiative, shall immediately reinstate the claim against that provider.
19 Reinstatement of a party pursuant to this subsection shall not be barred
20 by any statute of limitations defense that was not valid at the time the
21 original action was filed.

22 In any action in which the health care provider is found by the
23 court to have knowingly filed a false or inaccurate affidavit of
24 noninvolvement, the court shall impose upon the person who signed
25 the affidavit or represented the party, or both, an appropriate sanction,
26 including, but not limited to, ²[a civil penalty not to exceed \$10,000
27 and]² an order to pay to the other party or parties the amount of the
28 reasonable expenses incurred as a result of the filing of the false or
29 inaccurate affidavit, including a reasonable attorney fee. The court
30 shall also refer the matter to the Attorney General and the appropriate
31 professional licensing board for further review.

32 d. If the court determines that a plaintiff falsely objected to a
33 health care provider's affidavit of noninvolvement, or knowingly
34 provided an inaccurate statement regarding a health care provider's
35 affidavit, the court shall impose upon the plaintiff or the plaintiff's
36 counsel, or both, an appropriate sanction, including, but not limited to,
37 an order to pay to the other party or parties the amount of the
38 reasonable expenses incurred as a result of the ²submission of the²
39 false objection or inaccurate statement, including a reasonable attorney
40 fee. ²The court shall also refer the matter to the Attorney General and
41 the appropriate professional licensing board for further review.²

42 e. As used in this section, "health care provider" means an
43 individual or entity, which, acting within the scope of its licensure or
44 certification, provides health care services, and includes, but is not
45 limited to: a physician, dentist, nurse, pharmacist or other health care
46 professional whose professional practice is regulated pursuant to Title

1 45 of the Revised Statutes; and a health care facility licensed pursuant
2 to P.L.1971, c.136 (C.26:2H-1 et seq.)

3
4 7. (New section) In an action alleging medical malpractice, a
5 person shall not give expert testimony or execute an affidavit pursuant
6 to the provisions of P.L.1995, c.139 (C.2A:53A-26 et seq.) on the
7 appropriate standard of practice or care unless the person is licensed
8 as a physician or other health care professional in the United States
9 and meets the following criteria:

10 a. If the party against whom or on whose behalf the testimony is
11 offered is a specialist or subspecialist recognized by the American
12 Board of Medical Specialties or the American Osteopathic Association
13 and the care or treatment at issue involves that specialty or
14 subspecialty recognized by the American Board of Medical Specialties
15 or the American Osteopathic Association, the person providing the
16 testimony shall have specialized at the time of the occurrence that is
17 the basis for the action in the same specialty or subspecialty,
18 recognized by the American Board of Medical Specialties or the
19 American Osteopathic Association, as the party against whom or on
20 whose behalf the testimony is offered, and if the person against whom
21 or on whose behalf the testimony is being offered is board certified and
22 the care or treatment at issue involves that board specialty or
23 subspecialty recognized by the American Board of Medical Specialties
24 or the American Osteopathic Association, the expert witness shall be:

25 (1) a physician credentialed by a hospital to treat patients for the
26 medical condition, or to perform the procedure, that is the basis for
27 the claim or action; or

28 (2) a specialist or subspecialist recognized by the American Board
29 of Medical Specialties or the American Osteopathic Association who
30 is board certified in the same specialty or subspecialty, recognized by
31 the American Board of Medical Specialties or the American
32 Osteopathic Association, and during the year immediately preceding
33 the date of the occurrence that is the basis for the claim or action, shall
34 have devoted a majority of his professional time to either:

35 (a) the active clinical practice of the same health care profession
36 in which the defendant is licensed, and, if the defendant is a specialist
37 or subspecialist recognized by the American Board of Medical
38 Specialties or the American Osteopathic Association, the active
39 clinical practice of that specialty or subspecialty recognized by the
40 American Board of Medical Specialties or the American Osteopathic
41 Association; or

42 (b) the instruction of students in an accredited medical school,
43 other accredited health professional school or accredited residency or
44 clinical research program in the same health care profession in which
45 the defendant is licensed, and, if that party is a specialist or
46 subspecialist recognized by the American Board of Medical Specialties

1 or the American Osteopathic Association, an accredited medical
2 school, health professional school or accredited residency or clinical
3 research program in the same specialty or subspecialty recognized by
4 the American Board of Medical Specialties or the American
5 Osteopathic Association; or

6 (c) both.

7 b. If the party against whom or on whose behalf the testimony is
8 offered is a general practitioner, the expert witness, during the year
9 immediately preceding the date of the occurrence that is the basis for
10 the claim or action, shall have devoted a majority of his professional
11 time to:

12 (1) active clinical practice as a general practitioner; or active
13 clinical practice that encompasses the medical condition, or that
14 includes performance of the procedure, that is the basis of the claim or
15 action; or

16 (2) the instruction of students in an accredited medical school,
17 health professional school, or accredited residency or clinical research
18 program in the same health care profession in which the party against
19 whom or on whose behalf the testimony is licensed; or

20 (3) both.

21 c. A court may waive the same specialty or subspecialty
22 recognized by the American Board of Medical Specialties or the
23 American Osteopathic Association and board certification
24 requirements of this section, upon motion by the party seeking a
25 waiver, if, after the moving party has demonstrated to the satisfaction
26 of the court that a good faith effort has been made to identify an
27 expert in the same specialty or subspecialty, the court determines that
28 the expert possesses sufficient training, experience and knowledge to
29 provide the testimony as a result of active involvement in, or full-time
30 teaching of, medicine in the applicable area of practice or a related
31 field of medicine.

32 d. Nothing in this section shall limit the power of the trial court to
33 disqualify an expert witness on grounds other than the qualifications
34 set forth in this section.

35 e. In an action alleging medical malpractice, an expert witness
36 shall not testify on a contingency fee basis.

37 f. An individual or entity who threatens to take or takes adverse
38 action against a person in retaliation for that person providing or
39 agreeing to provide expert testimony, or for that person executing an
40 affidavit pursuant to the provisions of P.L.1995, c.139 (C.2A:53A-26
41 et seq.), which adverse action relates to that person's employment,
42 accreditation, certification, credentialing or licensure, shall be liable to
43 a civil penalty not to exceed \$10,000 and other damages incurred by
44 the person and the party for whom the person was testifying as an
45 expert.

1 ¹8. Section 2 of P.L.1995, c.139 (C.2A:53A-27) is amended to
2 read as follows:

3 2. In any action for damages for personal injuries, wrongful death
4 or property damage resulting from an alleged act of malpractice or
5 negligence by a licensed person in his profession or occupation, the
6 plaintiff shall, within 60 days following the date of filing of the answer
7 to the complaint by the defendant, provide each defendant with an
8 affidavit of an appropriate licensed person that there exists a
9 reasonable probability that the care, skill or knowledge exercised or
10 exhibited in the treatment, practice or work that is the subject of the
11 complaint, fell outside acceptable professional or occupational
12 standards or treatment practices. The court may grant no more than
13 one additional period, not to exceed 60 days, to file the affidavit
14 pursuant to this section, upon a finding of good cause.

15 [The] In the case of an action for medical malpractice, the person
16 executing the affidavit shall meet the requirements of a person who
17 provides expert testimony or executes an affidavit as set forth in
18 section 7 of P.L. , c. (C.)(pending before the Legislature as
19 this bill). In all other cases, the person executing the affidavit shall be
20 licensed in this or any other state; have particular expertise in the
21 general area or specialty involved in the action, as evidenced by board
22 certification or by devotion of the person's practice substantially to the
23 general area or specialty involved in the action for a period of at least
24 five years. The person shall have no financial interest in the outcome
25 of the case under review, but this prohibition shall not exclude the
26 person from being an expert witness in the case.¹

27 (cf: P.L.1995, c.139, s.2)

28
29 ¹[8.] 9.¹ (New section) ²[a.]² A judge presiding over an action
30 alleging medical malpractice, in which the jury has rendered a verdict
31 in favor of the complaining party, shall, upon a motion by any party for
32 additur or remittitur on the issue of the quantum of damages, consider
33 the evidence in the light most favorable to the non-moving party and
34 determine whether the award is clearly inadequate or excessive in view
35 of the nature of the medical condition or injury that is the cause of
36 action or because of passion or prejudice by the jury.

37 ²[b. The provisions of subsection a. of this section shall apply to
38 claims filed on or after the effective date of this act.]²

39
40 ¹[9.] 10.¹ (New section) a. If an individual's actual health care
41 facility duty, including on-call duty, does not require a response to a
42 patient emergency situation, a health care professional who, in good
43 faith, responds to a life-threatening emergency or responds to a
44 request for emergency assistance in a life-threatening emergency
45 within a hospital or other health care facility, is not liable for civil
46 damages as a result of an act or omission in the rendering of
47 emergency care. The immunity granted pursuant to this section shall

1 not apply to acts or omissions constituting gross negligence,
2 recklessness or willful misconduct.

3 b. The provisions of subsection a. of this section shall not apply
4 to a health care professional if a provider-patient relationship existed
5 before the emergency, or if consideration in any form is provided to
6 the health care professional for the service rendered.

7 c. The provisions of subsection a. of this section ²[shall not apply
8 if a general hospital has not reasonably and adequately staffed its
9 emergency department] do not diminish a general hospital's
10 responsibility to comply with all Department of Health and Senior
11 Services licensure requirements concerning medical staff availability
12 at the hospital².

13 d. A health care professional shall not be liable for civil damages
14 for injury or death caused in an emergency situation occurring in the
15 health care professional's private practice or in a health care facility on
16 account of a failure to inform a patient of the possible consequences
17 of a medical procedure when the failure to inform is caused by any of
18 the following:

19 (1) the patient was unconscious;

20 (2) the medical procedure was undertaken without the consent of
21 the patient because the health care professional reasonably believed
22 that the medical procedure should be undertaken immediately and that
23 there was insufficient time to fully inform the patient; or

24 (3) the medical procedure was performed on a person legally
25 incapable of giving informed consent, and the health care professional
26 reasonably believed that the medical procedure should be undertaken
27 immediately and that there was insufficient time to obtain the informed
28 consent of the person authorized to give such consent for the patient.

29 The provisions of this subsection shall apply only to actions for
30 damages for an injury or death arising as a result of a health care
31 professional's failure to inform, and not to actions for damages arising
32 as a result of a health care professional's negligence in rendering or
33 failing to render treatment.

34 e. As used in this section:

35 (1) "Health care professional" means a physician, dentist, nurse or
36 other health care professional whose professional practice is regulated
37 pursuant to Title 45 of the Revised Statutes and an emergency medical
38 technician or mobile intensive care paramedic certified by the
39 Commissioner of Health and Senior Services pursuant to Title 26 of
40 the Revised Statutes; and

41 (2) "Health care facility" means a health care facility licensed by
42 the Department of Health and Senior Services pursuant to P.L.1971,
43 c.136 (C.26:2H-1 et seq.) and a psychiatric hospital operated by the
44 Department of Human Services and listed in R.S.30:1-7.

1 ¹[10.] 11.¹ Section 1 of P.L.1995, c.69 (C.45:9-19.16) is
2 amended to read as follows:

3 1. a. A physician licensed by the State Board of Medical
4 Examiners, or a physician who is an applicant for a license from the
5 State Board of Medical Examiners, shall notify the board within 10
6 days of :

7 (1) any action taken against the physician's medical license by any
8 other state licensing board or any action affecting the physician's
9 privileges to practice medicine by any out-of-State hospital, health
10 care facility, health maintenance organization or other employer;

11 (2) any pending or final action by any criminal authority for
12 violations of law or regulation, or any arrest or conviction for any
13 criminal or quasi-criminal offense pursuant to the laws of the United
14 States, this State or another state, including, but not limited to:

15 (a) criminal homicide pursuant to N.J.S.2C:11-2;

16 (b) aggravated assault pursuant to N.J.S.2C:12-1;

17 (c) sexual assault, criminal sexual contact or lewdness pursuant to
18 N.J.S.2C:14-2 through 2C:14-4; or

19 (d) an offense involving any controlled dangerous substance or
20 controlled substance analog as set forth in chapter 35 of Title 2C of
21 the New Jersey Statutes.

22 b. A physician who is in violation of this section is subject to
23 disciplinary action and civil penalties pursuant to sections 8, 9 and 12
24 of P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

25 c. The State Board of Medical Examiners shall notify all
26 physicians licensed by the board of the requirements of this section
27 within 30 days of the date of enactment of this act.

28 (cf: P.L.1995, c.69, s.1)

29
30 ¹[11.] 12.¹ Section 13 of P.L.1989, c.300 (C.45:9-19.13) is
31 amended to read as follows:

32 13. a. In any case in which the State Board of Medical Examiners
33 refuses to issue, suspends, revokes or otherwise conditions the license,
34 registration, or permit of a physician, podiatrist or medical resident or
35 intern, the board shall, within 30 days of its action, notify each
36 licensed health care facility, psychiatric hospital operated by the
37 Department of Human Services and listed in R.S.30:1-7, and health
38 maintenance organization with which the person is affiliated and every
39 board licensee in the State with which the person is directly associated
40 in his private medical practice.

41 b. If, during the course of an investigation of a physician, the
42 board requests information from a health care facility, psychiatric
43 hospital operated by the Department of Human Services or health
44 maintenance organization regarding that physician, and the board
45 subsequently makes a finding of no basis for disciplinary action, the
46 board shall, within 30 days of making that finding, notify the health
47 care facility, State psychiatric hospital or health maintenance

1 organization of its determination.

2 (cf: P.L.1989, c.300, s.13)

3
4 ¹[12.] 13.¹ (New section) a. On or after the effective date of
5 P.L. , c. (C.) (pending before the Legislature as this bill) and
6 except as provided in subsection d. of this section, no person who is
7 an officer, director or board member of a professional association for
8 health care providers shall serve concurrently as an officer, director or
9 board member of a State-domiciled medical malpractice liability
10 insurer that is licensed in the State and offering medical malpractice
11 liability insurance policies on that effective date.

12 b. As used in this section, "health care provider" means an
13 individual or entity, which, acting within the scope of its licensure or
14 certification, provides health care services, and includes, but is not
15 limited to, a physician, dentist, nurse or other health care professional
16 whose professional practice is regulated pursuant to Title 45 of the
17 Revised Statutes, and a health care facility licensed pursuant to
18 P.L.1971, c.136 (C.26:2H-1 et seq.).

19 c. A person or professional association who violates the provisions
20 of this section shall be liable for a civil penalty of \$10,000 for each
21 violation. The penalty shall be sued for and collected by the
22 Commissioner of Banking and Insurance in a summary proceeding in
23 accordance with the "Penalty Enforcement Law of 1999," P.L.1999,
24 c.274 (C.2A:58-10 et seq.).

25 d. In the case of an officer, director or board member of a medical
26 malpractice liability insurer who is an officer, director or board
27 member of a professional association for health care providers on the
28 effective date of P.L. , c. (C.) (pending before the Legislature as this
29 bill), the officer, director or board member shall have 180 days to
30 comply with the requirements of this section.

31
32 ¹[13.] 14.¹ (New section) Physicians may join together, by means
33 of a joint contract under the procedures established by this section, to
34 form a "Medical Malpractice Liability Insurance Purchasing Alliance"
35 for the purpose of negotiating a reduced premium for its members in
36 the purchase of medical malpractice liability insurance. The joint
37 contract shall be executed by all members of the purchasing alliance.

38 a. As used in this section:

39 "Board" means a medical malpractice liability insurance purchasing
40 alliance board of directors provided for in this section.

41 "Commissioner" means the Commissioner of Banking and
42 Insurance.

43 "Medical Malpractice Liability Insurance Purchasing Alliance,"
44 "purchasing alliance" or "alliance" means a purchasing alliance
45 established pursuant to this section.

46 "Member" means a physician who is a member of a medical
47 malpractice liability insurance purchasing alliance as provided for in

1 this section.

2 b. The purchasing alliance, which may be a corporation, shall be
3 governed by a board of directors, elected by the members of the
4 purchasing alliance. No person may serve as an officer or director of
5 an alliance who has a prior record of administrative, civil or criminal
6 violations within the financial services industry. The directors shall
7 serve for terms of three years, and shall serve until their successors are
8 elected and qualified. Each director shall serve without compensation,
9 except for reimbursement for actual expenses incurred by that director.

10 c. The board shall adopt by-laws for the operation of the
11 purchasing alliance, which shall be effective upon ratification by a
12 two-thirds majority of the members. The by-laws shall include, but not
13 be limited to:

14 (1) the establishment of procedures for the organization and
15 administration of the alliance; and

16 (2) procedures for the qualifications and admission of the members
17 of the alliance.

18 The bases for denial of membership shall include, but not be limited
19 to:

20 (a) performance of an act or practice that constitutes fraud or
21 intentional misrepresentation of material fact;

22 (b) previous denial of membership in the alliance; or

23 (c) previous expulsion from the alliance;

24 (3) procedures for the withdrawal of members from the alliance;

25 (4) procedures for the expulsion of members from the alliance.

26 The bases for expulsion shall include, but not be limited to:

27 (a) failure to pay membership or other fees required by the
28 purchasing alliance;

29 (b) failure to pay premiums in accordance with the terms of the
30 medical malpractice liability insurance policy or the terms of the joint
31 contract; or

32 (c) performance of an act or practice that constitutes fraud or
33 intentional misrepresentation of material fact; and

34 (5) procedures for the termination of the alliance.

35 d. In addition to the other powers authorized under this section,
36 a purchasing alliance shall have the authority to:

37 (1) set reasonable fees for membership in the alliance that will
38 finance reasonable and necessary costs incurred in administering the
39 purchasing alliance;

40 (2) negotiate premium rates for medical malpractice liability
41 insurance with insurers on behalf of the members of the alliance,
42 provided that negotiations are conducted by a person other than a
43 member of the alliance or an employee of a member of the alliance;

44 (3) provide premium collection services for insurance purchased
45 through the alliance for members;

46 (4) contract with third parties for any services necessary to carry
47 out the powers and duties authorized or required pursuant to this

1 section; and

2 (5) establish procedures for keeping confidential all
3 communications between the members of the purchasing alliance and
4 for prohibiting the dissemination and discussion of pricing information
5 and other business-related information between and among members
6 of the alliance.

7 e. A purchasing alliance established pursuant to the provisions of
8 this section shall not:

9 (1) assume risk for the cost or provision of medical malpractice
10 liability insurance;

11 (2) exclude a member who agrees to pay fees for membership and
12 the premium for medical malpractice liability insurance coverage and
13 who abides by the by-laws of the alliance;

14 (3) engage in any trade practice or activity prohibited pursuant to
15 P.L.1947, c.379 (C.17:29B-1 et seq.);

16 (4) represent more than 35% of the physicians in a county or other
17 relevant geographic service area; or

18 (5) require a member to purchase medical malpractice liability
19 insurance only through the alliance.

20 f. Within 30 days after its organization, the purchasing alliance
21 board shall file with the commissioner a certificate that shall list: the
22 members of the alliance; the names of the directors, chairman,
23 treasurer and secretary of the alliance; the address at which
24 communications for the alliance are to be received; a copy of the
25 certificate of incorporation of the alliance, if any; and a copy of the
26 joint contract executed by all of the members. Any change in the
27 information required by the provisions of this section shall be filed
28 with the commissioner within 30 days of the change.

29 g. The commissioner, pursuant to the "Administrative Procedure
30 Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall adopt rules and
31 regulations necessary to effectuate the provisions of this section.

32

33 ¹[14.] 15.¹ (New section) a. A medical malpractice liability
34 insurance policy, which is made, issued or delivered pursuant to
35 Subtitle 3 of Title 17 of the Revised Statutes in this State on or after
36 the effective date of P.L. , c. (C.) (pending before the
37 Legislature as this bill), may contain a provision that provides a person
38 insured under the policy with the exclusive right to require the insurer
39 to obtain the consent of the insured to settle any claim filed against the
40 insured; except that, if the policy contains that provision, the insurer
41 shall offer an endorsement, to be included in the policy at the option
42 of the insured, providing the insurer with the right to settle a claim
43 filed under the policy without first having obtained the insured's
44 consent. The insurer shall establish a premium for the endorsement,
45 which premium shall reflect any savings or reduced costs attributable
46 to the endorsement.

47 b. The Commissioner of Banking and Insurance, pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
2 seq.), shall adopt rules and regulations necessary to effectuate the
3 provisions of this section.

4
5 ¹[15.] 16.¹ (New section) a. Every insurer authorized to transact
6 medical malpractice liability insurance in this State shall offer medical
7 malpractice liability insurance policies with a deductible, at the option
8 of the insured, in an amount of at least \$5,000 per claim and up to
9 \$1,000,000 per claim, and may require the insured to provide
10 collateral for the deductible amount to the insurer.

11 b. Every insurer authorized to transact medical malpractice
12 liability insurance in this State shall provide an appropriate premium
13 reduction for any deductible chosen pursuant to subsection a. of this
14 section.

15 c. In the case of a policy with any deductible, the insurer shall be
16 responsible for payment of the deductible and shall be reimbursed for
17 that amount by the insured.

18
19 ¹[16.] 17.¹ (New section) Notwithstanding any other law or
20 regulation to the contrary, an insurer authorized to transact medical
21 malpractice liability insurance in this State shall not increase the
22 premium of any medical malpractice liability insurance policy based on
23 a claim of medical negligence or malpractice against the insured if the
24 insured is dismissed from an action alleging medical malpractice
25 ¹[within 180 days of the filing of the last responsive pleading] ²[prior
26 to the close of discovery¹] within 180 days of the filing of the last
27 responsive pleading².

28
29 ¹[17.] 18.¹ (New section) Each annual statement made after the
30 effective date of P.L. , c. (C.) (pending before the Legislature
31 as this bill), pursuant to the provisions of section 16 of P.L.1982,
32 c.114 (C.17:29AA-16), by an insurer writing medical malpractice in
33 this State, shall include a certification by the chief executive officer or
34 chief financial officer that the rates for every category, subcategory,
35 or risk classification are adequate to cover expected losses and
36 expenses of the insurer and to ensure the safety and soundness of the
37 insurer.

38
39 ¹[18.] 19.¹ (New section) Notwithstanding the provisions of
40 section 1 of P.L.1968, c.131 (C.17:29C-1) to the contrary, each notice
41 of renewal or nonrenewal by an insurer authorized to transact medical
42 malpractice liability insurance in this State shall be mailed or delivered
43 by the insurer to the insured not less than 60 days prior to the
44 expiration of the policy and, in the case of a nonrenewal, shall contain
45 the reason for the nonrenewal.

46

1 ¹[19. Section 3 of P.L.1982, c.114 (C.17:29AA-3) is amended to
2 read as follows:

3 3. As used in this act:

4 a. "Commercial lines insurance" includes all insurance policies
5 issued by a licensed insurer pursuant to Title 17 of the Revised
6 Statutes, except:

7 (1) Insurance of vessels or craft, their cargoes, marine builders'
8 risks, marine protection and indemnity, or other risks commonly
9 insured under marine, as distinguished from inland marine insurance
10 policies;

11 (2) Title insurance;

12 (3) Mortgage guaranty insurance;

13 (4) Workers' compensation and employers' liability insurance;

14 (5) Any policy or contract of reinsurance, other than joint
15 reinsurance to the extent provided for under section 22 of this act;

16 (6) Insurance written through the New Jersey Medical Malpractice
17 Reinsurance Association established pursuant to P.L.1975, c. 301 (C.
18 17:30D-1 et seq.);

19 (7) Insurance written through the New Jersey Insurance
20 Underwriting Association established pursuant to P.L.1968, c. 129 (C.
21 17:37A-1 et seq.);

22 (8) Insurance issued by hospital service corporations and medical
23 service corporations; **[and]**

24 (9) Insurance issued for personal, family or household purposes,
25 as determined by the commissioner; and

26 (10) Medical malpractice liability insurance.

27 b. "Commissioner" means Commissioner of Banking and
28 Insurance.

29 c. "Department" means the Department of Banking and
30 Insurance.

31 d. "Insurer" means any person, corporation, association, joint
32 underwriting association subject to section 22 of this act, partnership
33 or company licensed under the laws of this State to transact the
34 business of insurance in this State.

35 e. "Premium" means the consideration paid or to be paid to an
36 insurer for the issuance and delivery of any binder or policy of
37 insurance.

38 f. "Rate" means the unit charge by which the measure of exposure
39 or the amount of insurance specified in a policy of insurance or
40 covered thereunder is multiplied to determine the premium.

41 g. "Rate-making" means the examination and analysis of every
42 factor and influence related to and bearing upon the hazard and risk
43 made the subject of insurance; the collection and collation of such
44 factors and influences into rating systems; and the application of such
45 rating systems to individual risks.

46 h. "Rating system" means every schedule, class, classification,
47 rule, guide, standard, manual, table, rating plan, or compilation by

1 whatever name described, containing the rates used by any rating
2 organization or by any insurer, or used by any insurer or by any rating
3 organization in determining or ascertaining a rate.

4 i. "Reasonable degree of competition" means that degree of
5 competition which would tend to produce rates that are not excessive,
6 inadequate, or unfairly discriminatory, or forms that are not unfair,
7 inequitable, misleading or contrary to law, as determined by the
8 commissioner.

9 j. "Risk," as the context may require, means (1) as to fire
10 insurance or any other kind of insurance which, by law, may be
11 embraced in a policy of fire insurance as part thereof or as
12 supplemental thereto, any property, real or personal, described in a
13 policy, exposed to any hazard or peril named in such policy; and (2)
14 as to all other kinds of insurance not specifically included in clause (1)
15 of this subsection, the hazard or peril named in a policy of insurance.

16 k. "Special risks" mean (1) those commercial lines insurance risks
17 as specified on a list promulgated by the commissioner, which are of
18 an unusual nature or high loss hazard or are difficult to place or rate
19 or which are excess or umbrella or which are eligible for export; (2)
20 commercial lines insurance risks which produce minimum annual
21 premiums in excess of \$10,000.00; (3) inland marine insurance; or (4)
22 fidelity, surety or forgery bonds. Additions or deletions to the list
23 promulgated may be made by the commissioner without a hearing
24 upon notice to all licensed insurers.

25 l. "Supplementary rate information" includes any manual or plan
26 of rates, statistical plan, classification, rating schedule, rating rule and
27 any other rule used by an insurer in making rates.

28 (cf: P.L.1982, c.114, s.3)]¹

29
30 ¹[20. Section 10 of P.L.1982, c.114 (C.17:29AA-10) is amended
31 to read as follows:

32 10. a. Rates shall not be excessive, inadequate or unfairly
33 discriminatory.

34 b. (1) Notwithstanding the provisions of P.L.1982, c.114
35 (C.17:29AA-1 et seq.) to the contrary, no insurer writing medical
36 malpractice liability insurance in this State shall implement an
37 alteration, supplement or amendment to its rates or rating systems, or
38 any part thereof, which would result in a rate increase of 15% or more
39 on an annual basis for any medical specialty without complying with
40 the provisions of this subsection.

41 (2) Any alteration, supplement or amendment by a medical
42 malpractice liability insurer to its rates or rating systems, or any part
43 thereof, as described in paragraph (1) of this subsection shall be filed
44 for "file and use" with the commissioner at least 45 days prior to
45 becoming effective. The filing shall include a statement that explains
46 the reason for the proposed change and such information as the
47 commissioner may prescribe. Unless disapproved by the commissioner

1 prior to its effective date, the rate filing shall be deemed effective.

2 (3) If the commissioner finds that the rates as altered are
3 excessive, inadequate or unfairly discriminatory, the commissioner
4 shall issue an order disapproving of the alteration, supplement or
5 amendment.

6 (4) Upon satisfying the submission requirements of a rate filing
7 pursuant to this subsection or upon its disapproval by the
8 commissioner, the insurer may request that the filing be transmitted to
9 the Office of Administrative Law for a hearing, and may elect to
10 implement the proposed rates pending the outcome of that hearing;
11 except, however, that the final order issued on the filing may provide
12 for retroactive adjustment of the implemented rates.

13 (5) A rate filing that would result in a rate increase of less than
14 15% on an annual basis for any medical specialty is subject to the
15 provisions of P.L.1982, c.114 (C.17:29AA-1 et seq.).

16 (cf: P.L.1982, c.114, s.10)]¹

17

18 ¹20. Section 13 of P.L.1982, c.114 (C.17:29AA-13) is amended to
19 read as follows:

20 13. a. If the commissioner finds, after a hearing, that a rate or
21 policy form in effect for any rating organization or insurer, whether or
22 not a member or subscriber of a rating organization is not in
23 compliance with the standards of this act, he shall issue an order
24 specifying in what respects it so fails, and stating when, within a
25 reasonable period thereafter, such rate or form shall be deemed no
26 longer effective. The order shall not affect any contract or policy
27 made or issued prior to the expiration of the period set forth in the
28 order.

29 b. If the commissioner finds, after a hearing, that a rate in effect
30 for any insurer writing medical malpractice liability insurance is not in
31 compliance with the provisions of P.L.1982, c.114 (C.17:29AA-1 et
32 seq.), the commissioner shall issue an order specifying in what respects
33 it so fails, and stating when such rate shall no longer be deemed
34 effective. The order may provide for the retroactive adjustment of
35 rates and require the payment or credit of interest to insureds covered
36 during the adjusted rate period. Interest shall be calculated at the
37 percentage of interest prescribed in the Rules Governing the Courts of
38 the State of New Jersey for judgments, awards and orders for the
39 payment of money.¹

40 (cf: P.L.1982, c.114, s.13)

1 21. (New section) Subject to standards adopted by the National
2 Association of Insurance Commissioners, the Commissioner of
3 Banking and Insurance shall, within 180 days after the effective date
4 of P.L. , c. (C.) (pending before the Legislature as this bill) and
5 annually thereafter, review the current capitalization and reserve
6 requirements applicable to insurers authorized or admitted to transact
7 medical malpractice liability insurance in this State, as those
8 requirements are established by statute or regulation, or both.

9 Based upon the findings of that review, the commissioner shall
10 adopt regulations, pursuant to the "Administrative Procedure Act,"
11 P.L.1968, c.410 (C.52:14B-1 et seq.), to modify those requirements,
12 as the commissioner determines necessary in order to ensure the
13 solvency of those insurers and the availability and affordability of
14 medical malpractice liability insurance in this State. If the
15 commissioner determines that legislation is necessary to effect any
16 such modification, the commissioner shall notify the Governor and the
17 Legislature within the 180-day period provided in this section.

18
19 22. (New section) Every insurer authorized to transact medical
20 malpractice liability insurance in this State shall offer its insureds the
21 option to make premium payments in installments, as prescribed by the
22 Commissioner of Banking and Insurance by regulation.

23
24 23. Section 2 of P.L.1983, c.247 (C.17:30D-17) is amended to
25 read as follows:

26 2. a. Any insurer or insurance association authorized to issue
27 medical malpractice liability insurance in the State shall notify the
28 Medical Practitioner Review Panel established pursuant to section 8
29 of P.L.1989, c.300 (C.45:9-19.8) in writing of any medical malpractice
30 claim settlement, judgment or arbitration award involving any
31 practitioner licensed by the State Board of Medical Examiners and
32 insured by the insurer or insurance association. Any practitioner
33 licensed by the board who is not covered by medical malpractice
34 liability insurance issued in this State, who has coverage through a
35 self-insured health care facility or health maintenance organization, or
36 has medical malpractice liability insurance which has been issued by an
37 insurer or insurance association from outside the State, shall notify the
38 review panel in writing of any medical malpractice claim settlement,
39 judgment or arbitration award to which the practitioner is a party. The
40 review panel or board, as the case may be, shall not presume that the
41 judgment or award is conclusive evidence in any disciplinary
42 proceeding and the fact of a settlement is not admissible in any
43 disciplinary proceeding.

44 In any malpractice action against a practitioner, a settlement
45 prohibiting a complaint against the practitioner or the providing of
46 information to the review panel or board concerning the underlying
47 facts or circumstances of the action is void and unenforceable.

1 b. An insurer or insurance association authorized to issue medical
2 malpractice liability insurance in the State shall notify the review panel
3 in writing of any termination or denial of coverage to a practitioner or
4 surcharge assessed on account of the practitioner's practice method or
5 medical malpractice claims history.

6 c. The form of notification shall be prescribed by the
7 Commissioner of Banking and Insurance, shall contain such
8 information as may be required by the board and the review panel, and
9 shall be made within seven days of the settlement, judgment or award
10 or the final action for a termination or denial of, or surcharge on, the
11 medical malpractice liability insurance. Upon request of the board, the
12 review panel or the commissioner, an insurer or insurance association
13 shall provide all records regarding the defense of a malpractice claim,
14 the processing of the claim and the legal proceeding; except that
15 nothing in this subsection shall be construed to authorize disclosure of
16 any confidential communication which is otherwise protected by
17 statute, court rule or common law.

18 An insurer or insurance association, or any employee thereof, shall
19 be immune from liability for furnishing information to the review panel
20 and the board in fulfillment of the requirements of this section unless
21 the insurer or insurance association, or any employee thereof,
22 knowingly provided false information.

23 d. An insurer, insurance association or practitioner who fails to
24 notify the review panel as required pursuant to this section shall be
25 subject to such penalties as the Commissioner of Banking and
26 Insurance may determine pursuant to section 12 of P.L.1975, c.301
27 (C.17:30D-12). In addition to, or in lieu of suspension or revocation,
28 the commissioner may assess a fine which shall not exceed \$1,000 for
29 the first offense and \$2,000 for the second and each subsequent
30 offense, which may be recovered in a summary proceeding, brought in
31 the name of the State in a court of competent jurisdiction pursuant to
32 ["the penalty enforcement law," N.J.S.2A:58-1 et seq.] the "Penalty
33 Enforcement Law of 1999," P.L.1999, c.274 (C.2A:58-10 et seq.).

34 e. A practitioner who fails to notify the review panel as required
35 pursuant to this section shall be subject to disciplinary action and civil
36 penalties pursuant to sections 8, 9 and 12 of P.L.1978, c.73
37 (C.45:1-21 to 45:1-22 and 45:1-25).

38 f. An insurer or insurance association shall make available to the
39 review panel or the board, upon request, any records of termination or
40 denial of coverage to a practitioner or surcharge assessed on account
41 of the practitioner's practice method or medical malpractice claims
42 history, which occurred up to five years prior to the effective date of
43 P.L.1989, c.300 (C.45:9-19.4 et al.).

44 g. For the purposes of this section, "practitioner" means a person
45 licensed to practice: medicine and surgery under chapter 9 of Title 45
46 of the Revised Statutes or a medical resident or intern; or podiatry
47 under chapter 5 of Title 45 of the Revised Statutes.

1 h. Any insurer or insurance association authorized to issue medical
2 malpractice liability insurance in the State shall notify the
3 Commissioner of Banking and Insurance, in a form and manner
4 specified by the commissioner, of any medical malpractice claim
5 settlement, judgment or arbitration award involving any practitioner
6 licensed by the State Board of Medical Examiners and insured by the
7 insurer or insurance association. The notification shall include the
8 specialty or area of professional practice of the practitioner and the
9 amount of the settlement, judgment or arbitration award, but shall not
10 include the name or other identifying information of the practitioner.
11 (cf: P.L.1989, c.300, s.4)

12

13 24. (New section) a. As used in this section:

14 "Annuity" means an annuity issued by an insurer licensed or
15 authorized to do business in this State which is a qualified assignment
16 under section 130 of the federal Internal Revenue Code of 1986, 26
17 U.S.C. s.130.

18 "Judgment creditor" means a claimant who is the recipient of an
19 award for economic or noneconomic damages, or both, that is the
20 result of an action filed against a health care provider for medical
21 malpractice, which award is subject to the provisions of subsection b.
22 of this section.

23 "Judgment debtor" means a health care provider who, as a
24 defendant in an action brought for medical malpractice, is required to
25 pay the claimant an award that is subject to the provisions of this
26 section.

27 "Noneconomic damages" means damages for physical and
28 emotional pain, suffering, inconvenience, physical impairment, mental
29 anguish, disfigurement, loss of enjoyment of life, loss of society and
30 companionship, loss of consortium, hedonic damages, injury to
31 reputation, and all other nonpecuniary losses of any kind or nature.

32 "Structured payment agreement" means an agreement made to
33 settle a claim or lawsuit or respond to a judgment in an action brought
34 for medical malpractice by an injured person whereby a series of
35 periodic payments, rather than a lump sum payment, is made over time
36 to a claimant, in accordance with the needs of the claimant or the
37 claimant's family, either through the purchase of an annuity or the
38 establishment of a trust fund, or by another means approved by the
39 court.

40 b. (1) Unless otherwise agreed to by the parties, in any judgment
41 resulting from a medical malpractice action brought by a claimant for
42 medical malpractice in which the noneconomic damages are less than
43 or equal to \$1,000,000, the court shall enter a judgment ordering that
44 all of the money damages, both economic and noneconomic, be paid
45 immediately.

46 (2) Unless otherwise agreed to by the parties, in any judgment
47 resulting from a medical malpractice action brought by a claimant for

1 medical malpractice in which the noneconomic damages exceed
2 \$1,000,000, the court shall enter a judgment ordering that 50% of the
3 noneconomic damages be paid immediately, with the costs and
4 attorney's fees to be paid from that amount. The remaining 50% of the
5 judgment shall be paid over 60 months in the form of a structured
6 payment agreement by any person, organization, group, or insurer that
7 is contractually liable to pay the judgment.

8 c. The structured payment agreement shall specify: the recipient
9 of the payments; the dollar amount of the payments; the interval
10 between payments; the number of payments or the period of time over
11 which payments are to be made; and the persons to whom money
12 damages are owed, if any, in the event of the judgment creditor's
13 death.

14 d. In the event of the judgment creditor's death, any amounts due
15 and owing pursuant to subsection b. of this section shall be paid to the
16 judgment creditor's estate.

17 e. The judgment debtor or the judgment debtor's insurer shall be
18 required to: post a bond or security; or, as otherwise provided by
19 regulation of the Department of Banking and Insurance, assure full
20 payment of the noneconomic damages awarded. A bond shall not be
21 deemed adequate unless it is written by a company authorized to do
22 business in this State and is rated ¹[A+] A-, or better,¹ by A.M. Best
23 Company ¹or such other company as is approved by the Department
24 of Banking and Insurance¹. If the judgment debtor is unable to
25 adequately assure full payment of the judgment, the judgment, reduced
26 to present value, shall be paid to the claimant in a lump sum. No bond
27 may be canceled or be subject to cancellation unless at least 60 days'
28 advance written notice is filed with the court and the claimant. Upon
29 termination of periodic payments, the security, or so much as remains,
30 shall be returned to the judgment debtor.

31 f. Upon the purchase of an annuity, establishment of a trust, or
32 approval of another arrangement for periodic payments by a court, any
33 obligation of the judgment debtor with respect to the judgment shall
34 cease.

35
36 25. Section 1 of P.L.1997, c.365 (C.45:9-19.17) is amended to
37 read as follows:

38 1. a. A physician who maintains a professional medical practice
39 in this State and has responsibility for patient care is required to be
40 covered by medical malpractice liability insurance ²issued by a carrier
41 authorized to write medical malpractice liability insurance policies in
42 this State,² in the sum of \$1,000,000 per occurrence and \$3,000,000
43 per policy year² [. with] and unless renewal coverage includes the
44 premium retroactive date, the policy shall provide for² extended
45 reporting endorsement coverage for claims made policies, also known
46 as "tail coverage,"² [issued by a carrier authorized to write medical
47 malpractice liability insurance policies in this State,]² or, if such

1 liability coverage is not available, by a letter of credit for at least [the
2 minimum amount required by the State Board of Medical Examiners]
3 \$500,000.

4 The physician shall notify the State Board of Medical Examiners
5 of the name and address of the insurance carrier or the institution
6 issuing the letter of credit, pursuant to section 7 of P.L.1989, c.300
7 (C.45:9-19.7).

8 b. A physician who is in violation of this section is subject to
9 disciplinary action and civil penalties pursuant to sections 8, 9 and 12
10 of P.L.1978, c.73 (C.45:1-21 to 22 and 45:1-25).

11 c. The State Board of Medical Examiners [shall] may, pursuant
12 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1
13 et seq.), [adopt regulations which] establish [the] by regulation,
14 minimum [amount of a line] amounts for medical malpractice liability
15 insurance coverage and lines of credit [that is] in excess of those
16 amounts required pursuant to subsection a. of this section.

17 d. The State Board of Medical Examiners shall notify all
18 physicians licensed by the board of the requirements of this section
19 within 30 days of the date of enactment of [this act] P.L. , c. (now
20 before the Legislature as this bill).
21 (cf: P.L.1997, c.365, s.1)
22

23 26. (New section) For the purposes of sections 27 and 28 of
24 P.L. , c. (C.)(pending before the Legislature as this bill):

25 "Commissioner" means the Commissioner of Banking and
26 Insurance.

27 "Fund" means the Medical Malpractice Liability Insurance
28 Premium Assistance Fund established pursuant to section 27 of P.L. ,
29 c. (C.)(pending before the Legislature as this bill).

30 "Health care provider" means a physician, podiatrist, dentist and
31 chiropractor licensed pursuant to the provisions of Title 45 of the
32 Revised Statutes, a nurse licensed pursuant to the provisions of Title
33 45 of the Revised Statutes who is employed by a licensed hospital,
34 long-term care facility or assisted living facility in this State and any
35 person who purchases professional liability insurance on behalf of or
36 for a ¹[health care provider] practitioner¹, including professional
37 liability insurance protection which is provided for hospital employed
38 physicians through hospital funding supplemented by purchased
39 commercial insurance coverage.

40 ¹"Practitioner" means a physician, podiatrist, dentist and
41 chiropractor and a nurse employed by a licensed hospital, long-term
42 care facility or assisted living facility in this State.¹
43

44 27. (New section) a. There is established a Medical Malpractice
45 Liability Insurance Premium Assistance Fund within the Department
46 of the Treasury as a nonlapsing, revolving fund.

1 b. The fund shall be comprised of the following revenue:

2 (1) an annual surcharge of \$3 per employee for all employers who
3 are subject to the New Jersey "unemployment compensation law,"
4 R.S.43:21-1 et seq., collected by the comptroller for the New Jersey
5 Unemployment Compensation Fund and paid over to the State
6 Treasurer for deposit in the fund annually, as provided by the
7 commissioner, which surcharge may, at the option of the employer, be
8 treated as a payroll deduction to each covered employee;

9 (2) an annual charge of ²[\$50] \$75² to be imposed by the State
10 Board of Medical Examiners on every physician and podiatrist licensed
11 by the board pursuant to the provisions of R.S.45:9-1 et seq.,
12 collected by the board and remitted to the State Treasurer for deposit
13 into the fund;

14 (3) an annual charge of ²[\$50] \$75² to be imposed by the State
15 Board of Chiropractic Examiners on every chiropractor licensed by the
16 board pursuant to the provisions of P.L.1989, c.153 (C.45:9-41.17 et
17 seq.), collected by the board and remitted to the State Treasurer for
18 deposit into the fund;

19 (4) an annual charge of ²[\$50] \$75² to be imposed by the New
20 Jersey State Board of Dentistry on every dentist licensed pursuant to
21 the provisions of R.S. 45:6-1 et seq., collected by the board and
22 remitted to the State Treasurer for deposit into the fund;

23 (5) an annual charge of ²[\$50] \$75² to be imposed by the New
24 Jersey State Board of Optometrists on every optometrist licensed by
25 the board pursuant to the provisions of R.S.45:12-1 et seq., collected
26 by the board and remitted to the State Treasurer for deposit into the
27 fund; and

28 (6) an annual fee of ²[\$50] \$75² to be assessed by the State
29 Treasurer and payable by each person licensed to practice law in this
30 State, for deposit into the fund.

31 The provisions of paragraphs (2) through (5) of this subsection
32 shall not apply to physicians, podiatrists, chiropractors, dentists or
33 optometrists who: are statutorily or constitutionally barred from the
34 practice of their respective profession; can show that they do not
35 maintain a bona fide office for the practice of their profession in this
36 State; are completely retired from the practice of their profession; are
37 on full-time duty with the armed forces, VISTA or the Peace Corps
38 and not engaged in practice; or have not practiced their profession for
39 at least one year.

40 The provisions of paragraph (6) of this subsection shall not apply
41 to attorneys who: are constitutionally or statutorily barred from the
42 practice of law; can show that they do not maintain a bona fide office
43 for the practice of law in this State; are completely retired from the
44 practice of law; are on full-time duty with the armed forces, VISTA or
45 the Peace Corps and not engaged in practice; are ineligible to practice
46 law because they have not made their New Jersey Lawyers' Fund for
47 Client Protection payment; or have not practiced law for at least one

1 year.

2 c. The State Treasurer shall deposit all moneys collected by him
3 pursuant to this section into the fund. Monies credited to the fund
4 may be invested in the same manner as assets of the General Fund and
5 any investment earnings on the fund shall accrue to the fund and shall
6 be available subject to the same terms and conditions as other monies
7 in the fund.

8 d. The fund shall be administered by the Department of Banking
9 and Insurance in accordance with the provisions of ¹[this act] P.L. ,
10 c. (C.)(pending before the Legislature as this bill)¹.

11 e. The monies in the fund are specifically dedicated and shall be
12 utilized exclusively for the following purposes:

13 (1) ²[\$20] \$17² million shall be allocated ¹annually¹ for the
14 purpose of providing relief towards the payment of medical
15 malpractice liability insurance premiums to health care providers in the
16 State who have experienced or are experiencing a liability insurance
17 premium increase in an amount as established by the commissioner by
18 regulation and meet the criteria established pursuant to section 28 of
19 P.L. , c. (C.)(pending before the Legislature as this bill);

20 (2) ²[\$8] \$6.9² million shall be allocated ¹annually¹ to the Health
21 Care Subsidy Fund established pursuant to section 8 of P.L.1992,
22 c.160 (C.26:2H-18.58) for the purpose of providing payments to
23 hospitals in accordance with the formula used for the distribution of
24 charity care subsidies that are provided pursuant to P.L.1992, c.160
25 (C.26:2H-18.51 et al.);

26 (3) ¹[\$2] \$1¹ million shall be allocated¹annually¹ for a student
27 loan expense reimbursement program for ¹[health care providers who
28 are members of specialties and subspecialties who qualify for relief
29 under subsection b. of section 28 of P.L. , c. (C.)(pending before
30 the Legislature as this bill)] obstetrician/gynecologists¹, to be
31 established pursuant to section 29 of P.L. , c. (C.)(pending before
32 the Legislature as this bill); and

33 (4) ¹[the balance of any unexpended monies in the fund]
34 ²[\$1] \$1.2² million¹ shall be allocated ¹annually¹ to the Division of
35 Medical Assistance and Health Services in the Department of Human
36 Services for the ¹[provision of other health care services as
37 determined by the Commissioner of Human Services] purposes
38 provided in section 30 of P.L. , c. (C.)(pending before the
39 Legislature as this bill)¹.

40 f. The fund ²and the annual surcharge, charges and fee provided
41 for in subsection b. of this section² shall expire three years after the
42 effective date of P.L. , c. (C.)(pending before the Legislature as this
43 bill).

44 ²g. The commissioner, in consultation with the Commissioner of
45 Health and Senior Services, shall adopt rules and regulations pursuant
46 to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1

1 et seq.), to carry out the purposes of sections 26 through 29 of P.L. ,
 2 c. (C.)(pending before the Legislature as this bill); except that,
 3 notwithstanding any provision of P.L.1968, c.410 to the contrary, the
 4 commissioner may adopt, immediately upon filing with the Office of
 5 Administrative Law, such regulations as the commissioner deems
 6 necessary to implement the provisions of sections 26 through 29 of
 7 P.L. , c. (pending before the Legislature as this bill), which shall be
 8 effective for a period not to exceed six months and may thereafter be
 9 amended, adopted or readopted by the commissioner in accordance
 10 with the requirements of P.L.1968, c.410.²

11

12 28. (New section) a. In order to carry out the purposes of
 13 section 27 of P.L. , c. (C.)(pending before the Legislature as this
 14 bill), the commissioner shall, at a minimum:

15 (1) establish a program to provide medical malpractice liability
 16 insurance premium subsidies to health care providers from monies that
 17 are contained in the fund;

18 (2) establish a methodology and procedures for determining
 19 eligibility for, and providing subsidies from, the fund;

20 (3) maintain confidential records on each health care provider who
 21 receives assistance from the fund;

22 (4) take all necessary action to recover the cost of the subsidy
 23 provided to a health care provider that the commissioner determines
 24 to have been incorrectly provided; and

25 (5) provide for subsidies to all ¹[health care providers]
 26 practitioners¹ who are members of specialties and subspecialties who
 27 qualify for relief under subsection b. of this section, including those
 28 whose professional liability insurance protection is provided by
 29 hospital funding supplemented by purchased commercial insurance
 30 coverage.

31 b. The commissioner shall certify classes of ¹[health care
 32 providers] practitioners¹ by specialty and subspecialty for each type
 33 of practitioner, whose average medical malpractice premium, as a
 34 class, on or after December 31, 2002, is in excess of an amount per
 35 year as determined by the commissioner by regulation. In certifying
 36 classes eligible for the subsidy, the commissioner, in consultation with
 37 the Commissioner of Health and Senior Services, may also consider if
 38 access to care is threatened by the inability of a significant number of
 39 ¹[health care providers] practitioners¹, as applicable, in a particular
 40 specialty or subspecialty, to continue practicing in a geographic area
 41 of the State.

42 (1) In order to be eligible for a subsidy from the fund, a ¹[health
 43 care provider] practitioner¹ shall have received a medical malpractice
 44 liability insurance premium increase in an amount as determined by the
 45 commissioner by regulation, for one or more of the following: upon
 46 renewal on or after January 1, 2004, from the amount paid by that
 47 practitioner in calendar year 2003; upon renewal on or after January

1 1, 2005, from the amount paid by that practitioner in calendar year
2 2004; and upon renewal on or after January 1, 2006, from the amount
3 paid by that practitioner in calendar year 2005; or

4 (2) In the case of a health care provider providing professional
5 liability insurance protection through self-insured hospital funding
6 supplemented with purchased commercial insurance coverage, in order
7 to be eligible for a subsidy from the fund, that provider shall have
8 increased its total professional liability funding obligation in an amount
9 as determined by the commissioner by regulation, for one or more of
10 the following: upon renewal on or after January 1, 2004, from the
11 professional liability funding obligation paid by that provider in
12 calendar year 2003; upon renewal on or after January 1, 2005, from
13 the professional liability funding obligation paid by that provider in
14 calendar year 2004; and upon renewal on or after January 1, 2006,
15 from the professional liability funding obligation paid by that provider
16 in calendar year 2005.

17 (3) The amount of the subsidy shall be an amount, as determined
18 by the commissioner by regulation, of the increase from the preceding
19 year's premium or self-insured professional liability funding obligation;
20 except that no health care provider shall receive a subsidy in any year
21 that is greater than an amount as determined by the commissioner by
22 regulation.

23 c. A ¹[health care provider] practitioner¹ who has been subject to
24 a disciplinary action or civil penalty by the practitioner's respective
25 licensing board pursuant to sections 8, 9 or 12 of P.L.1978, c.73
26 (C.45:1-21, 22 or 25), when that action or penalty relates to the
27 ¹[provider's] practitioner's¹ provision of, or failure to provide,
28 treatment or care to a patient, is not eligible for a subsidy from the
29 fund.

30 d. (1) A ¹[health care provider] practitioner¹ who receives a
31 subsidy from the fund shall be required to practice in that
32 ¹[provider's] practitioner's¹ specialty or subspecialty in this State for
33 a period of at least two years after receipt of the subsidy.

34 (2) A ¹[health care provider] practitioner¹ who fails to comply
35 with the provisions of paragraph (1) of this subsection shall be
36 required to repay to the commissioner the amount of the subsidy, in
37 whole or in part as determined by the commissioner.

38 e. The commissioner may waive the criteria for eligibility for a
39 subsidy established pursuant to this section, if the commissioner
40 determines that access to care for a particular specialty is threatened
41 because of an inability of a sufficient number of practitioners in that
42 specialty or subspecialty to practice in a geographic area of the State.

43 f. The State Board of Medical Examiners, the State Board of
44 Chiropractic Examiners, the New Jersey State Board of Dentistry and
45 the New Jersey Board of Nursing shall each provide to the
46 commissioner, on a quarterly basis, the names of the practitioners who
47 have been subject to a disciplinary action or civil penalty by the

1 practitioner's respective licensing board.

2 ²g. For the purposes of section 29 of P.L. , c. (C.)(pending
 3 before the Legislature as this bill), the commissioner, in consultation
 4 with the State Board of Medical Examiners, shall provide to the
 5 Higher Education Student Assistance Authority the names of
 6 obstetrician/gynecologists licensed by the board who may qualify for
 7 the student loan reimbursement program established pursuant to P.L. ,
 8 c. (pending before the Legislature as this bill). A physician who has
 9 been subject to a disciplinary action or civil penalty by the board, as
 10 provided in subsection c. of this section, shall not be eligible for the
 11 program.²

12
 13 29. (New section) a. There is established a student loan expense
 14 reimbursement program within the Higher Education Student
 15 Assistance Authority for ¹[health care providers who are members of
 16 specialties and subspecialties who qualify for relief under subsection
 17 b. of section 28 of P.L. , c. (C.)(pending before the Legislature as
 18 this bill)] obstetrician/gynecologists who agree to practice in State
 19 designated underserved areas as established pursuant to section 1 of
 20 P.L.1999, c.46 (C.18A:71C-35)¹. ²Any loans provided through the
 21 NJCLASS Loan Program pursuant to P.L.1999, c.46 (C.18A:71C-21
 22 et seq.) or a student loan program of the federal government shall be
 23 eligible for reimbursement under this program.²

24 The authority shall implement the program in consultation with the
 25 Commissioners of Banking and Insurance and Health and Senior
 26 Services ²and the State Board of Medical Examiners².

27 b. (1) ¹[A health care provider] An obstetrician/gynecologist¹
 28 who receives a payment under the student loan expense reimbursement
 29 program shall be required to practice ¹[in that provider's specialty or
 30 subspecialty] as an obstetrician/gynecologist in an underserved area¹
 31 in this State for a period of at least four years after receipt of the
 32 payment.

33 (2) ¹[A health care provider] An obstetrician/gynecologist¹ who
 34 fails to comply with the provisions of paragraph (1) of this subsection
 35 shall be required to repay to the Higher Education Student Assistance
 36 Authority the amount of the payment, in whole or in part as
 37 determined by the authority.

38 c. The authority shall adopt rules and regulations, pursuant to the
 39 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
 40 seq.), to effectuate the purposes of ²[subsection a. of]² this section,
 41 including, but not limited to: eligibility for the program, procedures
 42 for application, selection of participants, establishment and
 43 nullification of contracts established with participants under the
 44 program, ²and² reports to the program by participants²[, and
 45 recruitment of participants]².

46

1 ¹30. (New section) Within the limits of funds appropriated
2 pursuant to section 27 of P.L. , c. (C.)(pending before the
3 Legislature as this bill) and such other funds as may be available for
4 this purpose, the FamilyCare Health Coverage Program established
5 pursuant to P.L.2000, c.71 (C.30:4J-1 et seq.) shall enroll into the
6 program women whose eligibility under the Medicaid New Jersey Care
7 pregnant women program or the "New Jersey Standardized Parent
8 Service Package," Demonstration Population 3, Medicaid expansion
9 for uninsured pregnant woman, has expired and whose family income
10 does not exceed 100% of the federal poverty level.

11 The Commissioner of Human Services shall establish a presumptive
12 eligibility process to provide for an efficient transition into the
13 FamilyCare Health Coverage Program from the Medicaid program
14 pursuant to this section.¹

15
16 ¹[30.] 31.¹ There is established the "Medical Care Availability
17 Task Force."

18 a. The task force shall consist of 17 members as follows:

19 (1) the Commissioners of Banking and Insurance, Health and
20 Senior Services, and Human Services, and the Director of the
21 Administrative Office of the Courts, or their designees, who shall serve
22 ex officio; and

23 (2) 13 public members, who shall include: one person appointed
24 upon the recommendation of an organization that represents
25 physicians; one person appointed upon the recommendation of an
26 organization that represents osteopathic physicians and surgeons; one
27 person appointed upon the recommendation of an organization that
28 represents dentists; one person appointed upon the recommendation
29 of an organization that represents hospitals; one person appointed
30 upon the recommendation of an organization that represents teaching
31 hospitals; one person appointed upon the recommendation of an
32 organization that represents trial lawyers; one person appointed upon
33 the recommendation of an organization that represents attorneys; one
34 person appointed upon the recommendation of an organization that
35 represents medical malpractice insurers; one person appointed upon
36 the recommendation of an organization that represents managed care
37 carriers; and four persons who represent the interests of health care
38 consumers.

39 Of the 13 public members, five shall be appointed by the Governor,
40 with the advice and consent of the Senate; four shall be appointed by
41 the President of the Senate; and four shall be appointed by the Speaker
42 of the General Assembly. The Governor, the President of the Senate,
43 and the Speaker of the General Assembly shall consult with each other
44 on the appointment of the public members.

45 b. Vacancies in the membership of the task force shall be filled in
46 the same manner provided for the original appointments. The public
47 members of the task force shall serve without compensation but may

1 be reimbursed for traveling and other miscellaneous expenses
2 necessary to perform their duties, within the limits of funds made
3 available to the task force for its purposes.

4 c. (1) The task force shall organize as soon as practicable, but no
5 later than the 30th day after the appointment of its members, and shall
6 select a chairperson and vice-chairperson from among the members.
7 The chairperson shall appoint a secretary who need not be a member
8 of the task force.

9 (2) The task force may meet at the call of the chairperson and hold
10 hearings at the times and in the places it may deem appropriate and
11 necessary to fulfill its charge. The task force shall be entitled to call
12 to its assistance, and avail itself of the services of, the employees of
13 any State, county or municipal department, board, bureau, commission
14 or agency as it may require and as may be available to it for its
15 purposes.

16 (3) The Department of Banking and Insurance shall provide staff
17 services to the task force.

18 d. The purpose of the task force shall be to study the following
19 issues:

20 (1) the advantages and disadvantages of establishing limitations on
21 noneconomic damages for medical malpractice judgments and on
22 extending current limitations on liability that apply to nonprofit
23 hospitals to employees, other than physicians, of those hospitals;

24 (2) the impact of third party reimbursement policies by insurers
25 and health maintenance organizations on access to health care services
26 in the context of the current affordability crisis in the State affecting
27 health care providers in the purchase of necessary liability coverage;

28 (3) the advantages and disadvantages of adopting additional
29 changes to the statute of limitations regarding medical malpractice
30 actions;

31 (4) the advantages and disadvantages of establishing additional
32 procedures for mediation of actions alleging medical malpractice and
33 for screening for frivolous medical malpractice lawsuits; ¹and¹

34 (5) the advantages and disadvantages of establishing a pre-suit
35 procedure ¹['; and

36 (6) the necessity for, and advantages and disadvantages of,
37 reactivating the Medical Malpractice Reinsurance Association
38 established pursuant to P.L.1975, c.301 (C.17:30D-1 et seq.)¹.

39 e. The task force shall present a report of its findings and
40 recommendations to the Governor and the Legislature no later than 24
41 months after the date of its initial meeting, and shall be authorized to
42 periodically issue a summary of its deliberations prior to the
43 presentation of its report.

1 ²32. The Commissioner of Banking and Insurance shall adopt rules
2 and regulations, pursuant to the "Administrative Procedure Act,"
3 P.L.1968, c.410 (C.52:14B-1 et seq.), to carry out the purposes of
4 sections 13, 16 through 19, 21, 22 and 24 of this act.²

5
6 ¹[31.] ²[32. ¹] 33.² This act shall take effect on the 30th day after
7 enactment and shall apply to causes of action for medical malpractice
8 that accrue on or after that effective date; except that ²section 9 shall
9 take effect upon action by the court.² sections ¹[13 through 15] 14
10 through 16¹ and section 22 shall take effect on the 180th day after the
11 date of enactment, sections ¹[16 and 18] 17 and 19¹ shall take effect
12 on the 90th day after the date of enactment, and the amendatory
13 provisions of sections 3 and 4 shall apply to injuries sustained at birth
14 on or after the effective date of this act. Section 29 shall expire three
15 years after the effective date.